be held liable to appellees, unless it be, as contended by counsel for appellant, that the failure of appellant to perform its statutory duty in the construction of its roadbed was not the proximate cause of the death of the deceased. * * * In the present case proof shows that persons were in the habit of resorting to the place where the deceased and his two brothers were camped, and therefore appellant was required to anticipate that a sudden overflow of the stream might prevent one or more persons who were camping at that place from making their escape in the usual way, and result in such persons seeking protection by climbing trees; and that, in the event of the trestle breaking loose and washing away, in floating down the stream it might tear down trees in which persons had taken refuge. We do not hold that, in order to create liability, it was necessary for appellant to have anticipated that some person would *probably* be located in a tree top on such occasions, nor do we believe that the law requires such a holding in order to establish liability. It should have anticipated those things which *might* happen, even if such occurrences would be unusual."

A judgment against the railroad for $2,500 was affirmed.

IN VACATION.

The late Eugene F. Ware had filed a demurrer, and was arguing the case before Judge Samuel F. Miller. The latter stopped counsel with the remark: "Mr. Ware, there is no use taking up any more time of this court. Why, that question has been decided against you by every court in Christendom."

"Oh, yes," replied Mr. Ware, in his genial and pleasant way, "I am aware of that, your Honor, but I know your Honor occasionally makes decisions contrary to every court in Christendom and I thought perhaps this would be one of the times."

"Go on, Mr. Ware, go on, sir, I will hear you. Go, on, sir."